

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 28, 2022

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

FERNANDO MAGANA-ECHEVERRIA,

Defendant.

No. 4:21-CR-06023-SAB-1

**ORDER GRANTING MOTION
TO WITHDRAW PLEA**

Before the Court is Defendant's Unopposed Motion to Withdraw Plea of Guilty, ECF No. 39. The Court heard oral argument on the motion on April 26, 2022 by Video Conference. Defendant Fernando Magana-Echeverria was present by video, with his consent; he was represented by Casey Abrenz. The United States of America was represented by Caitlin Baunsgard.

At the hearing, Mr. Magana-Echeverria requested that the Court permit him to withdraw from his plea of guilty. Counsel for both parties indicated that Mr. Magana-Echeverria was advised of inaccurate sentencing guideline values during plea negotiations. Defense counsel represented that the values were material to Mr. Magana-Echeverria's decision to plead guilty. The United States agreed that the request was fair and just.

Federal Rule of Criminal Procedure 11(d)(2)(B) provides that a defendant may withdraw a plea of guilty prior to the imposition of sentence if he "can show a fair and just reason for requesting the withdrawal." While the defendant is not permitted to withdraw his guilty plea "simply on a lark," *United States v. Hyde*, 520

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1 U.S. 670, 676–77 (1997), the “fair and just” standard is generous and must be applied
2 liberally, *United States v. McTiernan*, 546 F.3d 1160, 1167 (9th Cir. 2008). “Prior
3 to sentencing, the proper inquiry is whether the defendant has shown a fair and just
4 reason for withdrawing his plea even if the plea is otherwise valid.” *United States v.*
5 *Davis*, 428 F.3d 802, 806 (9th Cir. 2005).

6 For the reasons stated at the hearing, the Court found that Mr. Magana-
7 Echeverria demonstrated a fair and just reason for withdrawal of his guilty plea, and
8 granted the motion. This Order memorializes the Court’s ruling.

9 Accordingly, **IT IS HEREBY ORDERED:**

10 1. Defendant’s Unopposed Motion to Withdraw Plea of Guilty, ECF No.
11 39, is **GRANTED**.

12 2. A pretrial conference is **SET** for **May 3, 2022**, at **3:00 p.m.** by Video
13 Conference.

14 3. Pursuant to 18 U.S.C. § 3161(h)(1)(G) and (H), the time between
15 January 26, 2022, the change of plea date, and April 28, 2022, the date of this Order,
16 is **DECLARED EXCLUDABLE** for purposes of computing time under the Speedy
17 Trial Act. *See United States v. Solorzano-Rivera*, 368 F.3d 1073, 1077 (9th Cir.
18 2004).

19 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter
20 this Order and provide copies to counsel.

21 **DATED** this 28th day of April 2022.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

27 Stanley A. Bastian
28 Chief United States District Judge